

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
CEDRIC FERNANDO COBB and) CASE NO. 05-61371 JPK
JANIS DENISE COBB,) Chapter 13
)
Debtors.)

ORDER REGARDING MOTION TO REINSTATE
AUTOMATIC STAY

On June 12, 2007, the debtors, by counsel, filed a Motion to Reinstate Automatic Stay as to General Motors Acceptance Corporation a/k/a GMAC, together with a form of Notice and Opportunity to Object which apparently seeks to invoke the "drop dead" provisions of N.D.Ind.L.B.R. B-2002-2.

First, the subject matter of the Motion is not within the scope of motions provided for by N.D.Ind.L.B.R. B-2002-2, and the Notice and Opportunity to Object has no effect in this case.

More importantly, the Motion itself seeks to reimpose the provisions of 11 U.S.C. § 362(a) under circumstances in which GMAC apparently properly invoked termination of the stay pursuant to the terms of the Court's order entered on September 25, 2006. Rather than assert that GMAC was not entitled to a declaration of termination of the stay pursuant to that order – a self-implementing declaration under the terms of the order – the debtors' Motion seems to confirm the fact that GMAC was entitled to its declaration of termination of stay, but asserts that the debtors should be relieved from the consequences of non-compliance with the Court's September 25, 2006 order because subsequent to the declaration of default, they have paid substantial sums to the Chapter 13 Trustee.

One interesting facet of the debtors' Motion is the extent to which it seeks relief pursuant to Fed.R.Bankr.P. 9023 or 9024. To the extent that a final order/judgment is implicated, under the circumstances of this case, the debtors' recourse would be to Fed.R.Bankr.P. 9024/

Fed.R.Civ.P. 60(b), which brings with it the obligation to file a memorandum in support of the motion pursuant to N.D.Ind.L.B.R. B-9023-1(a). In one context, the Court's September 25, 2006 order was a final order on the motion for stay relief filed by GMAC, and the declaration of default by GMAC under that order is not itself an order but rather a means of implementation of an otherwise final order. Under this analysis, the debtors' request for relief must be directed to the September 25, 2006 order, a very difficult task under Rules 9023/60(b) in view of the fact that the order was agreed to by the debtors. It also appears from the face of the debtors' Motion to Reinstate Automatic Stay that they do not dispute that GMAC was entitled to invoke termination of the automatic stay under the terms of the September 25, 2006 order, and thus even if the declaration of default which served to terminate the automatic stay were itself viewed to be some form of determination subject to Fed.R.Bankr.P. 9024, it is beyond question that the debtors' Motion states no grounds for relief under that Rule.

In short, the Court determines that the debtors' Motion fails to state any claim upon which relief can be granted to the debtors, and therefore the Motion must be denied.¹

IT IS ORDERED that the Notice and Opportunity to Object filed on June 12, 2007 shall have no effect in this case.

¹ An infrequent but not uncommon motion filed by debtors with respect to dismissal of Chapter 13 cases for failure to pay the Chapter 13 Trustee as required by the terms of a plan, or to reverse the effects of orders for relief from stay granted by the Court based upon debtors' non-payment to a Trustee or directly to a creditor, asserts that after the case was dismissed or the motion for stay relief was granted the debtor made payments to the Trustee sufficient to cure the default which gave rise to the dismissal or the granting of stay relief. Orders of dismissal of a case and orders granting stay relief are final appealable orders, the effect of which can only be substantively challenged by motions pursuant to Fed.R.Bankr.P. 9023 or 9024, or by a timely effected appeal. The focus of any such motion is that at the time the Court's order was entered, the factual circumstances upon which the order was premised did not justify the relief granted by the order. In a circumstance in which the debtor is in fact in default at the time of dismissal of the case or at the time of granting of a motion for stay relief, there is no valid basis to challenge that order or request its reversal based upon circumstances which occurred subsequent to the entry of the order. The Court wishes to emphasize to all who read this order that motions which essentially state "I admit I was in default, but after an order was entered I got myself current" state no grounds whatsoever for any relief from an order premised upon default at the time it was entered.

IT IS FURTHER ORDERED that the foregoing Motion to Reinstate Automatic Stay filed by the debtors on June 12, 2007 is denied.

Dated at Hammond, Indiana on June 27, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee